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APPLICATION NO.	1	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/493,753	3,753 01/28/2000		Clifford A McCarthy	10992091	2627
22879	7590	04/19/2005		EXAMINER	
		ARD COMPANY	TANG, KENNETH		
P O BOX 272400, 3404 E. HARMONY ROAD INTELLECTUAL PROPERTY ADMINISTRATION FORT COLLINS, CO 80527-2400				ART UNIT	PAPER NUMBER
				2195	
				DATE MAILED: 04/19/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE @ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Eathermore of time many be available under the procedure of 3° CFR 1.35(c), in no event, however, may a reply be timely filed Eathermore of time many be available under the procedure of 3° CFR 1.35(c), in no event, however, may a reply be timely filed Eathermore of the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of birty (30) days, will be considered timely. If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of birty (30) MoNTHS from the mailing date of fine communication. Faint be reply within the series statement and the mailing date of this communication to become 45/NFOOKED (30 U.S.C. § 133). When the series of period the series statement and the series of period to be series of period to the series of period to be series of period to the series of period to series of period to the series of		Application No.	Applicant(s)					
Name	Office Action Commons	09/493,753	MCCARTHY ET AL.					
Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Estamicas for term my be available under the provision of 3° CFR 1.13(a), in no event, however, may a reply be timely filed state of the provision of 3° CFR 1.13(a), in no event, however, may a reply be timely filed in the period for reply specified above, the maximum of 3° CFR 1.13(a), in no event, however, may a reply be timely filed in the period for reply specified above, the maximum of 3° CFR 1.13(a), in no event, however, may a reply be timely filed in the period for reply specified above, the maximum of 3° CFR 1.13(a), in no event, however, may a reply be timely filed in the period for reply specified above, the maximum of the period for reply specified above, the maximum in the mailing date of this communication, specified above, the period of the period for reply will, the above, the application is the entire the stating date of this communication, even if timely filed, may refuse any section and patent term adjustment. See 37 CFR 1.704(a). Status 1) □ Responsive to communication(s) filled on 25 June 2004. 2a) □ This action is FINAL. 2b) □ This action is non-final. 3) □ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) □ Claim(s) ±22 is/are pending in the application. 4) □ Claim(s) ±3/are allowed. 4) □ Claim(s) ±3/are allowed. 5) □ Claim(s) ±3/are allowed. 6) □ Claim(s) ±3/are allowed. 7) □ Claim(s) 3.4.14 and 15 is/are objected to. 8) □ Claim(s) 3.4.14 and 15 is/are objected to. 9) □ Claim(s) 3.4.14 and 15 is/are objected to. 9) □ The specification is objected to by the Examiner. 10) □ The drawing(s) filed on is/are: a) □ accepted or b) □ objected to by the Examiner. Application Papers 9) □ The period for the priod ty documents have been received. 11 □ Certified copies of t	Office Action Summary	Examiner	Art Unit					
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. □ Extensions of time may be available under the providence of 37 CPR 1.736(s). In no event, however, may a reply be timely filed □ the period for reply specified above. The maximum statistory parties will apply and will expire 51% (5) MONTH'S from the mailing date of this communication. □ Filed to reply specified above. The maximum statistory parties will apply and will expire 51% (5) MONTH'S from the mailing date of this communication. □ Failure to reply whith the set or sendered period for ringival by statistic will apply and will expire 51% (5) MONTH'S from the mailing date of this communication. □ Failure to reply whith the set or sendered period for ringival by statistic was the application for the mailing date of this communication. □ Failure to reply whith the set or sendered period for ringival by statistic was not be applicated for the communication, and the mailing date of this communication. □ Statism								
THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the provisions of 3°CFR 1.13(e). In no event, however, may a reply be timely filed after EX (6) MOSTRIS from the mailing date of this communication. A provision of the control of time of the communication of the communic	The MAILING DATE of this communication app Period for Reply	ears on the cover sheet with the co	orrespondence address					
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2a) This action is FINAL. 2b) This action is non-final. 3 Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4 Claim(s) 1-20 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5 Claim(s) is/are allowed. 6 Claim(s) are subject to restriction and/or election requirement. Application Papers 9 The specification is objected to by the Examiner. 10 The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11 The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152. Priority under 35 U.S.C. § 119 12 Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of:	Status							
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	3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)	5) Notice of Informal P						

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Application/Control Number: 09/493,753 Page 2

Art Unit: 2195

DETAILED ACTION

1. This non-final rejection is in response to the Remarks on 6/25/04. Applicant's arguments have been fully considered but are now moot in view of the new grounds of rejections.

2. Claims 1-20 are presented for examination.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- 3. Claims 1-2, 5, 7-13, and 16-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Steere et al. (hereinafter Steere) ("A Feedback-driven Proportion Allocator for Real-Rate Scheduling").
- 4. As to claims 1, 12, 18, Steere teaches a method, system and program for managing allocation (adaptive scheduler) of computer resources among applications operating on a computer, based upon at least one user-defined goal for at least one application and application performance information (by specifying their desired proportion and/or period) related to the one application (see Abstract), the system comprising:
 - a calculator that determines an allocation request value using a proportional factor, an integral factor, and a derivative factor, (PID) wherein the factors are calculated from the

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at least one user-defined goal and the performance information (proportion and period)

(page 3, Section 3.1, page 6, 2nd column); and

- an arbiter (controller monitors and makes the adjustment) that is operative to adjust the allocation request value into an adjusted allocation value when the allocation request value and allocation request values associated with other applications exceeds a predetermined value (page 3, Section 3).
- 5. As to claims 2 and 13, it is rejected for the same reason as in claim 1. In addition, Steere teaches the PID factors having a proportional constant and a proportional variable (page 6, 2nd column through page 7, 1st column).
- 6. As to claim 5, Steere teaches wherein a number format for each of the at least one user-defined goal, the performance information, and the allocation request value is selected from the group consisting of: a floating point number, and an integer number (page 3, Section 3.1).

As to claim 7, Steere teaches wherein: the performance information is generated by a performance monitor that monitors a characteristic of the application associated with the goal (page 3, Section 3 and Section 3.1).

7. As to claim 8, Steere teaches wherein: the allocation request value is used by a process resource manager to allocate computer processing resources among the applications operating on the computer (page 3, Section 3 and Section 3.1).

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Section 3 and Section 3.1).

8. As to claim 9, Steere teaches wherein the one application is one of a plurality of applications, and each application of the plurality has an associated user-selectable priority and an allocation request value, wherein: the arbiter determines whether each application of the plurality of applications having the same priority can be allocated resources to equal its associated allocation request value, if so, then the arbiter forms the adjusted allocation request value for each application by equaling the adjusted allocation request value to the allocation request value, and if not, then the arbiter determines whether each application of the plurality of applications having the same priority can be allocated resources to equal a target value (page 3,

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- 9. As to claim 10, Steere teaches wherein: the target value is selected by the arbiter from the lowest of a previously allocated request value, which has not been previously selected as a target value, and an allocation request value of an application of the plurality of applications having the same priority, which has not been previously selected as a target value (page 3, Section 3 and Section 3.1).
- 10. As to claim 11, Steere teaches wherein: the arbiter forms the adjusted allocation request value for each application by equaling the adjusted allocation request value to the target value, if the arbiter determines that each application of the plurality of applications having the same priority can be allocated resources to equal the target value (page 3, Section 3 and Section 3.1).

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11. As to claims 16 and 19, they are rejected for the same reasons as stated in the rejections of claims 9 and 10.

12. As to claim 17 and 20, they are rejected for the same reasons as stated in the rejections of claim 9.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 13. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steere et al. (hereinafter Steere) ("A Feedback-driven Proportion Allocator for Real-Rate Scheduling")...
- 14. As to claim 6, Steere fails to explicitly teach a rounder that uses cumulative rounding to adjust the floating point allocation request value into an integer number. However, it is well known in the art and obvious that the values can be rounded cumulatively. This standard is used because it allows for simplification.

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Allowable Subject Matter

15. Claims 3-4 and 14-15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

16. Applicant's arguments have been fully considered but are now moot in view of the new grounds of rejections.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Tang whose telephone number is (571) 272-3772. The examiner can normally be reached on 8:30AM - 6:00PM, Every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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